

CHRISTOPHER C. LARKIN (State Bar No. 119950)
(e-mail: clarkin@seyfarth.com)
ERIK B. VON ZEIPEL (State Bar No. 223956)
(e-mail: evonzeipel@seyfarth.com)

SEYFARTH SHAW LLP
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

Attorneys for Defendants
HELEN OF TROY and
OXO INTERNATIONAL LTD.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN
as Trustee of Sorensen Research and
Development Trust

Plaintiff,

vs.

HELEN OF TROY and
OXO INTERNATIONAL LTD.

Defendants.

Case No. 3:07-cv-02278-BTM-CAB

Hearing Date: February 22, 2008
Hearing Time: 11:00 a.m.
Courtroom: 15

ORAL ARGUMENT NOT REQUIRED

**NOTICE OF MOTION AND MOTION
TO STAY LITIGATION PENDING
OUTCOME OF THE U.S. PATENT AND
TRADEMARK OFFICE
REEXAMINATION OF THE PATENT-
IN-SUIT**

THE HONORABLE BARRY TED MOSKOWITZ
UNITED STATES DISTRICT JUDGE
(Courtroom 15)

*[Memorandum of Points and Authorities;
and Declaration of Erik B. von Zeipel Filed
Concurrently Herewith]*

TO PLAINTIFF AND TO HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on February 22, 2008, at 11:00 a.m., or as soon thereafter as counsel may be heard in Courtroom 15 of the above-entitled Court, located at 880 Front Street, San Diego, California 92101, Defendants Helen of Troy and OXO International Ltd. (collectively, "Defendants") will and hereby do move to stay this litigation, including any obligation to answer or otherwise plead to Plaintiff's complaint, on the grounds that the patentability of the claims of U.S. patent no. 4,935,184 (the "'184 Patent"), which form the sole basis of Plaintiff's patent infringement allegations against Defendants in this case, is currently being reexamined by the U.S. Patent and Trademark Office ("Patent Office").

A stay of this litigation is particularly warranted, considering that: (a) on October 31, 2007, the Patent Office determined that there are substantial new questions relating to the patentability of the claims of the '184 Patent; (b) Sorensen filed his complaint on December 4, 2007, and the parties have not yet begun to incur substantial expenses relating to this litigation; (c) the '184 Patent will expire next month in February 2008; (d) a discovery schedule in this case has not yet been set, nor have the parties engaged in any fact or expert discovery or exchanged any initial Rule 26 disclosures; (e) a pretrial schedule and a trial date have not been set; and (f) Sorensen will not be prejudiced with a stay of litigation.

Indeed, a stay of these proceedings will prevent the unnecessary expenditure of resources of both the Court and the parties, because the Patent Office's reexamination of the '184 Patent will likely significantly simplify, if not totally eliminate, many of the issues that will proceed in this case. For example, if the Patent Office finds that the claims of the '184 Patent are invalid, Sorensen cannot amend the claims; instead, he can only cancel those invalid claims because the '184 Patent will expire in February 2008. Cancellation of the claims will substantially limit, if not totally eliminate, Sorensen's allegation of patent infringement against Defendants, which may necessarily require the dismissal of Sorensen's entire complaint against Defendants.

Importantly, Sorensen will not be prejudiced if this case is stayed while the Patent Office reexamines the patentability of the claims of the '184 Patent. For example, the '184 Patent will automatically expire next month in February 2008, and Sorensen will be unable to obtain any

1 injunctive relief against Defendants before that expiration. On the other hand, should the Patent
 2 Office confirm the patentability of the claims of the '184 Patent, and should Sorensen
 3 successfully prove that Defendants infringe the claims of the '184 Patent, and overcome all of
 4 Defendants' defenses, then Sorensen may be entitled to recover monetary damages.

5 In fact, in the substantially similar, co-pending lawsuit, Sorensen asserted that other,
 6 unrelated defendants infringe the claims of the '184 Patent. (See Case no. 06-cv-1572, Dkt. No.
 7 1). In that case, this Court granted the defendants' motion to stay the proceedings because the
 8 claims of the '184 Patent are being reexamined by the Patent Office. (Case no. 06-cv-1572, Dkt.
 9 No. 243). Importantly, that case was filed over a year before the Patent Office decided to
 10 reexamine the claims of the '184 Patent, and the parties had already engaged in substantial fact
 11 and expert discovery. Therefore, that lawsuit was much further along the "litigation path,"
 12 compared to the present lawsuit which was just filed on December 4, 2007.

13 Accordingly, as set forth in Defendants' accompanying Memorandum of Points and
 14 Authorities, Defendants respectfully request that the Court stay all proceedings in this lawsuit,
 15 including any obligation to answer or otherwise plead to Sorensen's complaint, pending
 16 completion of the US Patent Office's reexamination proceeding of the '184 Patent.

17 This Motion is based on this Notice of Motion and Motion, the concurrently filed
 18 Memorandum of Points and Authorities, the Declaration of Erik B. von Zeipel (including
 19 exhibits), the papers and records on file with this Court. Defendants waive oral argument on this
 20 motion.

21 Dated: January 7, 2008

Respectfully submitted,

SEYFARTH SHAW LLP
 CHRISTOPHER C. LARKIN
 ERIK B. VON ZEIPEL

s/Erik B. von Zeipel
 Attorney for Defendants HELEN OF TROY and
 OXO INTERNATIONAL LTD.
 E-mail: evonzeipel@seyfarth.com